IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 2673 of 2007(R)

CRRP.47/2006 of D.C. & SESSIONS COURT,KOZHIKODE
CC.92/2004 of C.J.M.,KOZHIKODE

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PETITIONER:

MUHAMMED KASSIM,
S/O.ALAVI HAJI, MANGALATH HOUSE,
VANDOOR AMSOM DESOM, MALAPPURAM DISTRICT.

BY ADV. SRI.JOSEPH SEBASTIAN PURAYIDAM
SMT.MABLE.C.KURIAN

RESPONDENTS:

STATE: S.I. OF POLICE,
KASBA POLICE STATION, KOZHIKODE,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY GOVT. PLEADER SMT. LATHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R. BASANT, J.

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W.P.C.No. 2673 of 2007 R

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Dated this the 24th day of January, 2007

JUDGMENT

This writ petition has been filed by the petitioner under Article 227 of the Constitution to assail the order passed by the learned Sessions Judge in a suo moto revision initiated by him.

2. The accused faces indictment for the offence under Section 420 I.P.C. Cognizance was taken by the learned Chief Judicial Magistrate. The learned Magistrate, without examining even one witness, proceeded to acquit the accused on the ground that witnesses have not been procured to tender evidence. The learned Sessions Judge, in the course of perusal of calender, found the acquittal to be unjustified. He called for the records. The learned Magistrate - subsequent incumbent - sent to the learned Sessions Judge a letter explaining the facts. It is thereafter that the impugned order was passed by the learned Sessions Judge in the revision.

3. The petitioner claims to be aggrieved by the impugned order. What is the grievance? The counsel first of all submits that necessary steps were taken, but inspite of that witnesses were not

present. The learned Sessions Judge was not satisfied that sufficient, serious and worthy attempts were taken to secure the presence of the accused. Evidently the conscience of the court was disturbed that such an acquittal could be resorted to. I find absolutely nothing wrong in the conclusion of the learned Sessions Judge that the acquittal without securing the presence of any relevant witness is unjustified. The learned Sessions Judge, I note, had alertly exercised his duties and responsibilities sitting as a court perusing calender statements. I am, in these circumstances, satisfied that the impugned order cannot be faulted for that reason.

4. The learned counsel for the petitioner next contends that the Sessions Judge's power of revision under Section 399 Cr.P.C. are different from the revisional powers of the High Court under Section 401 Cr.P.C. There can be no quarrel with that proposition. The decision in **John Samuel** v. **State of Kerala** (1985 KLT 902) has reiterated the position beyond controversy. But in the instant case, it is not a case where the records were before the learned Sessions Judge in connection with any other proceedings. The impugned order makes it clear that it was he who called for and perused the records, of course, on the basis of the letter of the Magistrate. I am, in these circumstances, satisfied that it cannot be held that

the impugned action taken by the Sessions Judge is beyond the scope of his powers under Section 399 Cr.P.C. as explained in the decision cited supra.

5. This writ petition is hence dismissed.

(R. BASANT)
Judge

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